IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LODGING NO.930 OF 2006

Association of Managements of
Unaided Private Medical and
Dental Colleges.....Petitioner

Versus

1.Pravesh Niyantran Samiti)
& Ors.)..Respondents

Mr. Milind Sathe, Senior Counsel with Mr. Nalin M. Shah and Mr. Deepak C. Natu i/b. N. Deepak & Co., for the Petitioner.
Mr. A.A. Kumbhakoni, Associate Advocate General and Mr. M.D. Naik, AGP for Respondent Nos. 2 and 3.
Mr. L.M. Acharya for Respondent Nos. 4 to 7.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 20th April,2006

P.C.:

. The Apex Court in Islamic Academy of Education vs. State of Karnataka, 2003 (6) S.C.C.697 in the matter of admission of students in paragraph 16 was pleased to observe as under:-

> "Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by the State/University". The words 'common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges

of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State."

The present petition has been filed by an Association known as Association of Management of Unaided Private Medical & Dental Colleges, Maharashtra (AMUPMDC). It is their case that the respondent Nos. 4, 5 and 6 had intimated to them that the seats in their institutions will be filled in based on the examination to be conducted by the petitioner institution. It is their case that though the initial Brochure did not show the seats from Respondent Nos. 4, 5 and 6 institutions to be filled in through the examination to be conducted by the petitioners nevertheless in the subsequent Brochure issued on 5th February, 2006 those seats were shown in the Brochure. It is pointed out that

only after examinations had been held have respondent Nos. 4, 5 and 6 intimated to the petitioners that those seats in their institutions will be filled in through the examination conducted by the respondent No.3, the State of Maharashtra. It is, therefore, submitted that this action of Respondent Nos.4,5 and 6 is arbitrary. It is pointed out that the petitioner No.1, which is the Samiti set up in terms of the judgment of the Apex Court for recalling admissions to the professional colleges could not have granted permission to Respondent Nos. 4, 5 and 6 to fill in their seats through the examination conducted by the respondent No.3 atleast without hearing the petitioners herein. It is, therefore, submitted that the action of Respondent No.1 is arbitrary and consequently liable to be quashed and set aside. For that purpose petitioners relied firstly on the communication addressed on behalf of Respondent Nos. 4, 5 and 6 to the petitioners. The respondent No.4 by communication of 12th December, 2005 had intimated to the petitioner that they were pleased to join in petitioner institution as per telephonic talk. It is thereafter set out that needful should be done. In so far as Respondent No.5 is concerned, the communication is dated December 23, 2005 wherein certain information has been conveyed to the petitioner. By subsequent communication of 25th January, 2006 the Respondent NO.5 intimated the petitioner that they would like to wait for the

final orders of the Supreme Court on the issue. We do not find any communication addressed by Respondent No.6 atleast on record to the petitioners.

2. The respondent No.1 on 16th February, 2006 pursuant to the communication of 6th February, 2006 by Respondent No.7 intimated to them that the decision of Respondent Nos. 4, 5 and 6 for approval of their decision to admit students based on the examination conducted by Respondent No.3 is accepted. It may be mentioned that the Respondent No.7 is another association in which institutions of Respondent Nos. 4, 5 and 6 are members. On behalf of Respondent Nos. 4 to 7 reply has been filed by Shri Ajit Palekar. It is pointed out that on 28tgh January,, 2006 Dr. Sancheti had informed the petitioners that these institutions are not joining the examination conducted by the petitioners. There was subsequent communication on 6th February, 2006.

3. The short question is, therefore, whether the action of respondent No.1 in permitting the seats in Respondent Nos. 4, 5 and 6 being filled in based on the test conducted by Respondent NO.3 can be said to be arbitrary. We have earlier referred to the paragraph from the judgment in the case of Islamic Academy of Education (supra). The observations in paragraph 16 clearly set out that the option of choosing either the test conducted by

the institution of private management and/or the State examination must be exercised before issuing the prospectus and after intimation to the concerned authority and the committee set up hereinafter. In other words something could have been said if Respondent Nos. 4, 5 and 6 had intimated to Respondent No.1 that they propose to fill in the seats through the examination conducted by the petitioners. It could still have been understood if as on the day the petitioner conducted the examination on 5th February, 2006 the Respondent Nos. 4, 5 and 6 were full members of the petitioners. There are serious disputes about the same. There is a grievance made on behalf of the petitioners that based on the communication by Respondent Nos. 4, 5 and 6 they have given option to the students. As we have noted the respondent No.5 had not committed itself. We do not find any correspondence on record of Respondent No.6. In these circumstances even if pursuant to some earlier representations the petitioner had shown those seats, those seats will no longer available to be filled based upon the test conducted by the petitioner and the students who occupy the seats will have to go for the alternative option which they have given.

4. Considering the above we find no merits in this petition, which is accordingly dismissed.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J)